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OCSPP Daily News Round-Up

Toxics

- Chemical Watch 04/29; US litigation round-up
- Chemical Watch 05/03; TSCA work plan substances could be added to Toxic Release Inventory
- Chemical Watch 04/29; US EPA round-up
- E&E News 05/03; Memphis pipeline faces environmental justice reckoning
- Inside TSCA 04/30; EPA Poised To Drop TSCA CBI Protections From 390 Chemicals
- Inside TSCA 04/30; Regan Weighs Need For New Tools To Address Cumulative Chemical Effects

Pesticides

- Agri-Pulse 04/29; Court says EPA must revoke or modify chlorpyrifos tolerances
- Bloomberg Law 04/30; PFAS in Pesticides Problem Ensnares States, Small Businesses
- DTN Progressive Farmer 04/30; Court Rules on Chlorpyrifos
- E&E News 04/29; Judges rebuke EPA for evading ban on pesticide in food
- Miami Herald 05/01; Genetically modified mosquitoes have landed in the Keys. Here's what you need to know
- Reuters 04/29; EPA's 'time is up' on critical pesticide chlorpyrifos - 9th Circuit
- Science Times 05/02; 12,000 Genetically Modified Mosquito Eggs Scattered in Florida as "Living Insecticides"

Blog/OpEd/Other

- National Law Review (Greenberg Traurig, LLP) 05/03; EPA Will Finalize Rule Imposing Toxics Release Inventory Reporting Requirements on Natural Gas Processing Facilities

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US litigation round-up

N/A, Chemical Watch

https://chemicalwatch.com/256752/us-litigation-round-up

Case over TSCA water fluoridation petition paused pending further study
A federal judge in California has paused litigation over a TSCA petition seeking an EPA rule to prohibit the addition of fluoride to drinking water, saying he wants to hear the results of a US National Toxicology Program (NTP) health study before proceeding further.

Judge Edward Chen of the US District Court for the Northern District of California said on 22 April that he would allow the NGO petitioners to submit new evidence to show how their members have been injured by the addition of fluoride to drinking water.

The parties are due to meet back in court for a status conference on 28 August.

The case is Food and Water Watch v EPA.

Litigation over science transparency rule on hold pending EPA action
A state-led action challenging the EPA's science transparency rule will remain on hold until at least 26 May, to give the agency time to formally retract the measure, a federal court in New York has ruled.

The EPA is working on an action to vacate the science transparency rule after a federal court in Montana struck down the controversial policy earlier this year.

Once the rule is formally vacated, further litigation would likely become "moot", the EPA told the court in a filing on 26 April.

The case is State of New York, et al v EPA.

TSCA work plan substances could be added to Toxic Release Inventory

Terry Hyland, Chemical Watch

https://chemicalwatch.com/257851/tsca-work-plan-substances-could-be-added-to-toxic-release-inventory

US EPA also looks to cover ethylene oxide, additional PFASs under reporting scheme

The US EPA has said it plans to expand Toxic Release Inventory (TRI) reporting to cover TSCA workplan substances, additional PFASs and ethylene oxide, in a move that could give the EPA more data to inform future regulatory action on concerning substances.

The agency said on 29 April that it was broadening the scope of the TRI programme – a reporting scheme that requires large facilities to report on substance releases to the environment – to "advance environmental justice, improve transparency and increase access to environmental information."

The expanded reporting also could arm the EPA with more information to support its ongoing and future TSCA

risk evaluation work, after the agency recently signalled it no longer plans to exclude from its existing chemical reviews exposures that result from releases to air or water.

Among the proposed expansions to TRI reporting is the inclusion of all 90 chemicals listed on the TSCA workplan, a list established in 2014 to identify substances with the potential for high hazard and exposure.

All of the 30 substances subject to EPA-initiated TSCA risk evaluations thus far have come from the workplan, and the 2016 amendments to the law require the agency to continue selecting at least half of its high-priority substances from that list until they have all been reviewed.

The agency has already begun to take other steps to increase information to support its ongoing TSCA risk evaluation work, with plans in the works for mandatory testing and a data call-in for unpublished health and safety studies. The additional TRI reporting could help fill data gaps on the exposure side for substances undergoing review.

TRI programme
Under the TRI programme, nearly 22,000 facilities must submit annual reports to the EPA indicating any listed substances they used in the preceding year above an established threshold.

The TRI list includes 770 individual chemicals and 33 chemical categories that can cause cancer, chronic health effects or significant environmental or acute human effects.

The agency uses reported information to better understand chemical releases and to help inform the development of regulations and other policies.

EtO, PFASs
Other TRI expansions would touch on substances that have been the subject of public scrutiny.

Plans include an expansion to require TRI reporting from natural gas processing facilities as well as certain sterilisation facilities that use ethylene oxide (EtO).

The EPA's Inspector General released a critical report on 15 April, concluding that agency officials delayed communicating health risks to Illinois residents living near EtO emitting facilities.

The TRI list could grow to include more per- and polyfluoroalkyl substances (PFASs), including perfluorobutane sulfonic acid (PFBS), the subject of a recently released toxicity assessment. The EPA added 172 PFASs to the TRI list last June.

The agency also said it was considering adding substances included in a 2014 petition from Massachusetts-based NGO Toxics Use Reduction Institute (Turi). The 25 industrial substances included in the group's petition were designated by the EPA as high production volume (HPV) substances and have a hazard classification from other authoritative bodies.

EPA's announcement follows an early April directive from Administrator Michael Regan calling for a greater focus on environmental justice and consideration of the impacts of potentially toxic releases on "pollution-burdened, underserved and tribal communities".

"By requiring new and more data on chemical releases from facilities, EPA and its partners will be better equipped to protect the health of every individual, including people of color and low-income communities that are often located near these...

US EPA round-up

N/A, Chemical Watch

https://chemicalwatch.com/256657/us-epa-round-up

EPA finalises TSCA significant new use rules for two substances
The US EPA has finalised TSCA significant new use rules (Snurs) for two substances that were the subject of pre-manufacture notices (PMNs), as well as a microorganism that is the subject of a microbial commercial activity notice (Mcan).

In each case, the Snurs are being applied in the absence of consent orders to address 'reasonably foreseen' uses of the substance that could present an unreasonable risk but that have not been thoroughly evaluated.

Originally proposed in March 2020, the Snurs mean that before a company may use a chemical for an unevaluated application, it must first submit a significant new use notice (Snun), which would give the EPA the opportunity to review it and determine if it poses an unreasonable risk.

The rule addresses:

P-18-0391: 1-propanaminium, N-(carboxymethyl)-N, N-dimethyl-3-[(3,5, 5-trimethyl-1-oxohexyl), amino]-inner salt; and
P-20-0013: 2-propenoic acid, 2-methyl-, (2-oxo-1,3-dioxolan-4-yl)methyl ester.
The Snurs are due to take effect on 29 June.

Agency proposes TSCA Snurs for three substances
The agency has proposed TSCA Snurs for three substances that are the subject of PMNs.

The substances are:

P-19-0082: heptanal, 6-hydroxy-2,6-dimethyl-;
P-20-0076: glycine, reaction products with sodium O-iso-Pr carbonodithioate, sodium salts; and
P-20-0094: Alkanedioic acid, polymer with tri-alkyl-isocyanatocarbomonocycle, dialkylglycols, ester with 2,3-dihydroxypropyl alkyl ester, 2-hydroxyethyl methacrylate-blocked (generic).
For each substance, the EPA has preliminarily determined they are not likely to present an unreasonable risk under their intended conditions of use. However, it has identified reasonably foreseen uses of each substance and it has not assessed the risk these uses might present.

If finalised, the proposal would require anyone who intends to pursue such an application to submit a significant new use notice (Snun) that the agency could evaluate.

Comments on the proposed Snurs will be accepted until 30 May.

EPA releases IRIS systematic review protocol for vanadium
The EPA has released for public comment a systematic review protocol for the Integrated Risk Information System (IRIS) assessment of vanadium and its compounds (oral exposure).

The agency is interested in feedback on:

its literature search strategies;
criteria for study inclusion or exclusion;
the evaluation of study methods;
information management for extracting data;
approaches for synthesis within and across lines of evidence; and
methods for deriving toxicity values.
Comments on the document will be accepted until 26 May.

TSCA PMN receipts for March
The EPA received 12 TSCA PMNs in March, and 29 amendments to past PMNs, according to a 27 April Federal Register notice.

The agency also notified that for March it received:

one significant new use notice (Snun) and one amendment to a previously submitted Snun;
eight notices of commencement (NOCs); and
test data in support of four PMNs and two low volume exemptions (LVEs).
Janet McCabe confirmed as deputy EPA administrator
The US Senate has voted 52–42 to confirm Janet McCabe to be the EPA's deputy administrator, putting the former EPA official into the number two position at the agency, under Administrator Michael Regan.

Ms McCabe previously served as acting assistant administrator for the EPA's Office of Air and Radiation during the Obama administration. More recently, Ms McCabe was a professor at Indiana University's Robert H. McKinney School of Law and directed the university's Environmental Resilience Institute.

Memphis pipeline faces environmental justice reckoning

Mike Soraghan, E&E News

https://www.eenews.net/stories/1063731519

MEMPHIS, Tenn. — Brad Robinson's eyes roll upward in thought as he counts them out — his mother, father, grandmother, his father-in-law and more.

"All of 'em," he said. "Died of cancer, and we never knew why."

At 63, he thinks he knows why: the smokestacks near where he grew up in Riverside, a blue-collar Black part of southwest Memphis. He lived there for years in the shadow of a refinery now owned by Valero Energy Corp.

"Over there, you can get away with anything," Robinson said. "Companies like Valero have gotten away with murder."

That's why he's come down on a cool but sunny April afternoon to City Hall to see a protest against the Byhalia Connection pipeline, a 50-mile oil conduit planned to run from the refinery through and around Memphis.

The project, a joint venture of Valero and Plains All American Pipeline LP, has come under fire from environmental groups that say it endangers the prized aquifer Memphis relies on for drinking water, and from community activists for cutting through Black neighborhoods.

But opponents are also seeking to harness resentment from years of pollution from the heavy industry that flanks the city's heavily Black southwest corner. They point to the 17 sites nearby reporting to EPA's Toxics Release Inventory, and the studies showing the area has a cancer risk at least four times higher than the national average. Robinson points to lung damage he said came from his job cleaning industrial barrels for a local company.

"This is bigger than the pipeline," said Justin Pearson, co-founder of the group Memphis Community Against Pollution (MCAP) and the young, charismatic face of the pipeline fight. "We're starting to connect dots in a way that historically has not been done."

But for Plains and Valero, the project is also about more than just a 24-inch pipe full of crude oil.

For them, the Byhalia segment is the key final piece of a 1,000-mile plan to bring North Dakota crude oil to the Gulf Coast for export.

The companies proposed the line in 2019 to connect the refinery and the 440-mile Diamond pipeline to the north-south Capline pipeline on the other side of Memphis. The companies say the pipeline planners worked diligently to minimize the pipeline's effects on the community and the risks have been exaggerated.

They say it will help the Memphis economy, support jobs at the refinery, and deliver tax revenue that can pay for critical services such as public safety and schools.

The lion's share of the pipeline would sweep around the outskirts of the Memphis metro area in north Mississippi. But the 7 miles in Memphis have pushed the Byhalia project to prominence in the renewed national debate about environmental justice and the fairness of adding new industrial facilities in poor communities.

The fight has gone national, bringing in figures such as former Vice President Al Gore, civil rights leader the Rev. William Barber II, Rep. Alexandria Ocasio-Cortez (D-N.Y.) and even Memphis native Justin Timberlake, who shared a video and petition against the pipeline to his nearly 60 million Instagram followers last month.

Opponents are suing to revoke the pipeline's federal permit, and the Memphis City Council has come out against the pipeline. The council is scheduled to vote tomorrow on final passage of a city law that would severely constrict development of the pipeline (Energywire, March 17).

'It's not humanly right'

Riverside, where Robinson grew up, is a grid of modest homes within a collection of southwest Memphis neighborhoods often known here by the ZIP code — 38109. According to the Census Bureau, the area is 97% Black and has a median household income of about $31,000...

EPA Poised To Drop TSCA CBI Protections From 390 Chemicals

David LaRoss, Inside TSCA

https://insideepa.com/tsca-news/epa-poised-drop-tsca-cbi-protections-390-chemicals

EPA plans to shift 390 chemicals whose identities were previously considered confidential business information (CBI) to the public portion of the Toxic Substances Control Act (TSCA) inventory, but it appears to be delaying decisions on more than 1,000 other substances after a host of companies sought to bolster their CBI claims.

The agency on April 29 released a list of 390 chemicals it says will no longer be considered confidential in the next TSCA inventory update, which is "anticipated in late summer 2021."

The substances are noted only by their accession numbers, which are numeric identifiers assigned to chemicals whose composition is a trade secret.

But according to Richard Dension, a senior scientist with the Environmental Defense Fund (EDF), the announcement covers a much narrower set of chemicals than the more than 1,700 that EPA considered making public in 2020, apparently because it only acts on submissions to the TSCA chemical data reporting (CDR) program where companies explicitly listed substances as not being confidential that were previously CBI.

"The specific identities of these chemicals were reported as non-confidential during CDR reporting from the 2012, 2016, and/or 2020 reporting periods," EPA's announcement says. It notes that "Stakeholders with interest, questions, or concerns about this change" have until May 14 to contact the agency.

That would mean decisions on whether companies have properly substantiated any still-pending CBI claims will come in a separate action, Denison tells Inside TSCA.

And it leaves outstanding the question of how to resolve what the Trump EPA said was widespread confusion over how to comply with recent updates to the 2017 Inventory Active-Inactive Rule that set requirements for CBI claims.

The agency crafted that update after EDF won a 2019 decision from the U.S. Court of Appeals for the District of Columbia Circuit that said the original version of the rule did not properly consider reverse engineering, or methods that can be used to identify chemicals listed in the confidential portion of the inventory.

After releasing the new rule EPA required companies to re-substantiate many of their CBI claims by a Nov. 1, 2020, deadline, with the agency and industry attorneys alike warning that companies that either failed to act or did not provide the proper data could see their proprietary chemicals moved to the public inventory.

"If the CBI claim is not substantiated then EPA will proceed through its normal approach for removing that substance from the confidential inventory, moving it to the public portion of the inventory," said Greg Clark, partner at Keller and Heckman, during an Oct. 14 webinar on the rule.

'Misunderstood' Mandate

But shortly before the presidential transition, the Trump EPA sought to reopen the window for substantiating CBI claims, through a Federal Register notice that would have provided an extra 60 days for companies to provide necessary documentation to the agency.

The notice said, "Certain entities have indicated to EPA that they either misunderstood the reporting requirements and did not submit the filings pursuant to the requirements of the Active-Inactive Rule or made mistakes in their filings."

And it continued, "These issues may have inadvertently undermined existing, potentially valid, CBI claims for chemical identity."

However, the notice was not formally published before President Joe Biden's inauguration, and the new administration blocked it as part of a blanket hold on policy actions that were pending when former President Donald Trump left office.

An EPA spokesperson says officials are still considering how to proceed. "This action was not published in the Federal Register and is undergoing reviewin accordance with theRegulatory Freeze Pending Review Memorandum," the spokesperson tells Inside TSCA.

Regan Weighs Need For New Tools To Address Cumulative Chemical Effects

Maria Hegstad, Inside TSCA

https://insideepa.com/tsca-news/regan-weighs-need-new-tools-address-cumulative-chemical-effects

EPA Administrator Michael Regan is holding "conversations" within the agency on whether officials have the tools and authorities it needs to adequately address the cumulative impacts of exposures to toxic chemicals and other forms of pollution, a key concern in environmental justice (EJ) communities.

"I'm in conversations right now with my general counsel and . . . the experts here in the agency to determine if we have all the tools we need to adequately address cumulative . . . impact or do we need more assistance from Congress. And we look forward to partner with you on answering that question," Regan told Rep. Donald McEachin (D-VA) during an April 29 hearing on the agency's fiscal year 2022 budget request before the Energy and Commerce Committee's environment subpanel.

McEachin, who is a co-chairman of the House EJ task force and lead sponsor of a comprehensive EJ bill, urged Regan "to the extent that you feel like you need more assistance please holler. [We] wanna make sure that we have cumulative impacts appropriately identified and . . . make sure that we're protecting these communities from any further damage."

Addressing cumulative impacts from multiple pollution sources can be complicated legally and scientifically. But it is emerging as a key priority for Democrats and the Biden administration as they work to prioritize protections for so-called EJ communities, which can be exposed to a host of chemicals and pollutants in multiple environmental media and from a range of different sources, such as commercial, industrial or agricultural facilities, road traffic or transportation hubs.

Those factors often overlap with the adverse effects of poverty and systemic racism, such as limited health care access, poor quality schools, violence and substandard housing, leading to a complex challenge for regulators tasked with protecting residents of those communities from environmental and other harms.

In particular, efforts to evaluate and regulate complex environmental hazards have been stymied by the "stovepiping" of environmental statutes and the EPA programs they authorize into media-specific silos -- in addition to the isolation of federal statutes and agencies more generally to address broader enforcement and permitting issues.

For instance, environmentalists have argued that EPA needs better mapping of chemical releases in order to satisfy the reformed Toxic Substances Control Act's (TSCA) mandate to protect "susceptible subpopulations" from unreasonable risks posed by toxic chemicals and warned that current tools paint an incomplete picture of the hazards communities face.

McEachin specifically questioned Regan on how the agency is using its EJSCREEN mapping tool, which generally seeks to identify pollution burdens in communities, and could work in concert with any cumulative analysis tool.

The lawmaker called the tool "a critical piece of the puzzle when it comes to prioritizing and identifying communities most at risk," asking Regan whether he "envision[s] this tool helping to identify cumulative impacts that a community may be subject to?"

Regan responded, "We believe that it can inform us on cumulative impacts."

But McEachin also appeared to acknowledge limitations in the current version of EJSCREEN, as he questioned the administrator on whether he would involve the White House in efforts to either expand the tool or develop new, broader EJ mapping software.

Updating EJSCREEN

He asked the administrator to "tell us how the EPA is working in tandem with the [White House Office of Management and Budget (OMB) and Council on Environmental Quality (CEQ)] to create a tool that accurately identifies environmental hazards and impacted communities?"

In response, Regan linked that project to his prior post as the head of North Carolina's environment agency. "This is something that I have experience in doing in North Carolina. You are exactly right -- we have the right screening tools . . . Local economic...

Court says EPA must revoke or modify chlorpyrifos tolerances

Steve Davies, Agri-Pulse

https://www.agri-pulse.com/articles/15780-epa-must-revoke-or-modify-chlorpyrifos-tolerances-court-says

The Environmental Protection Agency must revoke all tolerances for chlorpyrifos or modify them to meet a federal food safety law, the Ninth Circuit Court of Appeals ruled Thursday.

The insecticide, which has been under fire for more than a decade because of its neurotoxic effects, especially on infants and children, has increasingly been the subject of state bans, including in California, in the absence of federal action. Major manufacturer Corteva Agriscience said last year it would stop making the insecticide at the end of 2020.

Former EPA Administrator Scott Pruitt in early 2017 allowed its continued use despite not making a safety finding, which the court in its decision described as a "delay tactic."

"EPA has spent more than a decade assembling a record of chlorpyrifos's ill effects and has repeatedly determined, based on that record, that it cannot conclude, to the statutorily required standard of reasonable certainty, that the present tolerances are causing no harm," the court said in a 2-1 decision.

"Yet, rather than ban the pesticide or reduce the tolerances to levels that the EPA can find are reasonably certain to cause no harm, the EPA has sought to evade, through one delaying tactic after another, its plain statutory duties," the court said. The Federal Food, Drug and Cosmetic Act "permits no further delay."

Specifically, EPA will have 60 days from the issuance of the court mandate implementing the decision to either revoke or modify the tolerances. The court also ordered EPA "to correspondingly modify or cancel related FIFRA registrations for food use in a timely fashion" in accordance with the law.

"The court got it right: EPA's time is now up," said Patti Goldman, managing attorney at Earthjustice, who litigated the case for environmental and farm labor groups. "EPA must now follow the law, ban chlorpyrifos, and protect children and farmworkers from a pesticide we know is linked to numerous developmental harms."

The New York Attorney General's Office also hailed the decision, with Attorney General Letitia James calling it a "major victory." The state led a coalition of nine attorneys general challenging EPA's decision to allow use of chlorpyrifos while EPA's registration review continues through 2022.

The court said based on the record, "the only reasonable conclusion the EPA could draw is that the present tolerances are not safe within the meaning of the FFDCA. The EPA can find a tolerance safe only if there is 'a reasonable certainty' of 'no harm,' and for nearly a decade, the EPA and its [Scientific Advisory Panels] have concluded that there is not a reasonable certainty of no harm."

The decision was written by U.S. District Judge Jed Rakoff of the Southern District of New York, sitting by designation, He was joined by Circuit Judge Jacqueline H. Nguyen. Dissenting was Circuit Judge Jay Bybee, who, while criticizing EPA "dithering," nonetheless said EPA's decisions were within the law.

"The question EPA had to answer in this proceeding is whether new scientific evidence is sufficient to require EPA to 'modify or revoke' its prior determination," Bybee said. "Under the FFDCA, EPA must do so 'if the Administrator determines it is not safe.'... Because EPA found that chlorpyrifos was safe when it concluded its prior rulemaking in 2006, EPA properly determined here that there was insufficient evidence to conclude that chlorpyrifos is 'not safe' and thus it was not required to 'modify or revoke' those tolerances."

The majority, however, called Bybee's reading "strained" and quoted the FFDCA, which says, "The Administrator may establish or leave in effect a tolerance for a pesticide chemical residue in or on a food only if the Administrator determines that the tolerance is safe. The Administrator shall modify or revoke a tolerance if the Administrator determines it is not safe."

"We think that these two simple sentences are — with their emphasis on the word 'only' — remarkably straightforward," the...

PFAS in Pesticides Problem Ensnares States, Small Businesses

Pat Rizzuto, Bloomberg Law

https://news.bloomberglaw.com/environment-and-energy/pfas-in-pesticides-problem-ensnares-states-small-businesses?usertype=External&bwid=00000179-1f07-df04-af79-ffafc79f0001&qid=7101350&cti=FGOV&uc=1320000080&et=NEWSLETTER&emc=neve_nl%3A53&source=newsletter&item=headline®ion=digest&access-ticket=eyJjdHh0IjoiTkVWRSIsImlkIjoiMDAwMDAxNzktMWYwNy1kZjA0LWFmNzktZmZhZmM3OWYwMDAxIiwic2lnIjoibVIyVm81ZHFaWDRZc2xaaVFXeDZrSVlUUEl3PSIsInRpbWUiOiIxNjIwMDQwNTUzIiwidXVpZCI6IlVNdnh4cG53ZUJSbXNiMjExYmNycWc9PW1Cbk5lbmVzNTkvakovSGFJNTJEREE9PSIsInYiOiIxIn0%3D

A decision by Maryland to switch mosquito sprays due to "forever chemicals" reveals choices that states and companies are quickly making as they and the EPA tackle a quandary: PFAS in pesticides.

Maryland's Department of Agriculture is pausing plans to use Bayer CropScience LP's Permanone 30-30 in its truck and plane spraying program, department spokesman Jason D. Schellhardt said Thursday. It will substitute Clarke's Biomist 30+30 as it awaits guidance from the Environmental Protection Agency, he said.

The EPA is investigating a discovery last month by the the advocacy group Public Employees for Environmental Responsibility. The group, known as PEER, found high concentrations of two per- and polyfluoroalkyl substances (PFAS) in Permanone 30-30, which Maryland has used.

The probe's launch followed the EPA's announcement in January that plastic packaging Clarke had used for another mosquito killer, Anvil 10+10, may be the source of PFAS that PEER discovered in that product last year.

Since Jan. 1, Biomist 30+30 and Anvil 10+10 have been put in new types of containers that should not be a source of PFAS, Clarke Vice President Karen J. Larson told Bloomberg Law.

Changing the pesticides' packaging, waiting for the EPA's review, and taking other voluntary actions to prevent PFAS contamination is costing Clarke—a third-generation, family-owned company based in Illinois—millions of dollars, Larson said.

"It's part of our culture to make those kinds of hard-but-right decisions," Larson said. "But this has been something unprecedented in our 75 years in business."

Questions for EPA

Bayer said it's working with the EPA on the mystery of how PFAS—which the agency says are not in any approved pesticide—got into its product. This work includes examining the lids and other components of the containers in which Permanone 30-30 is placed, Bayer spokeswoman Susan Luke said.

Pesticide makers, along with state and local regulators, have myriad questions for the EPA. They want to know what extent of suspected PFAS-contaminated containers also hold food and other goods; how to dispose or recycle contaminated pesticides and containers; whether states or pesticide manufacturers will be responsible for contaminated products; and what risk is posed by exposure combined with many others ways people inhale, ingest, or touch PFAS.

"There are a lot of other ways PFAS can end up in the environment," said Amy Sullivan, executive secretary for two related groups of state pesticide control officials. PFAS can get into plants, wildlife, and people's bodies through industrial air emissions, water releases, and the disposal of the chemicals or products made with them.

The EPA is working to answer questions and offer guidance as quickly as possible, Kimberly Nesci, a division

director in the EPA's Office of Pesticide Program, told state pesticide officials earlier this month. The agency also recognizes that mosquito treatments protect people from diseases like Zika, she said.

High-Density Polyethylene
The agency's hypothesis is that PFAS are generated when plastic high-density polyethylene (HDPE) containers are treated with fluorine gas, Nesci told Bloomberg Law. Small molecules on the container's surface may produce PFAS after the plastic is treated, she said.

Since EPA confirmed that fluorinated HDPE containers could release PFAS, Clarke has worked with more than 450 customers to exchange fluorinated HDPE containers containing Anvil 10+10 with non-fluorinated containers, Larson said. Fluorination prevents pesticides from breaking down or getting rancid and makes the plastic stronger protecting shipments, according to the pesticide trade group Responsible Industry for a Sound Environment.

The EPA is working with other agencies to get details on other uses of fluorinated HDPE containers, Nesci said. The Food and Drug Administration is seeking market information on the extent to which fluorinated HDPE containers are used for food, that agency said...

Court Rules on Chlorpyrifos

Todd Neeley and Emily Unglesbee, DTN Progressive Farmer

https://www.dtnpf.com/agriculture/web/ag/crops/article/2021/04/29/fix-chlorpyrifos-risks-ban-ninth-epa

LINCOLN, Neb. (DTN) -- The EPA has 60 days to either write a new rule to allow for the safe use of chlorpyrifos or halt all food residue tolerances of the insecticide, which would effectively ban most uses of it, according to a ruling handed down by a federal court on Thursday.

In an opinion from the U.S. Court of Appeals for the Ninth Circuit in San Francisco, the court said EPA has had long enough to respond to a 2007 petition by environmental groups to ban the chemical.

"EPA has had nearly 14 years to publish a legally sufficient response to the 2007 Petition (to ban chlorpyrifos)," the court said.

"During that time, the EPA's egregious delay exposed a generation of American children to unsafe levels of chlorpyrifos. By remanding back to the EPA one last time, rather than compelling the immediate revocation of all chlorpyrifos tolerances, the court is itself being more than tolerant. But the EPA's time is now up.

"The court remands this matter to the EPA with instructions to publish a legally sufficient final response to the 2007 petition within 60 days of the issuance of the mandate. That response must be a final regulation that either revokes all chlorpyrifos tolerances or modifies chlorpyrifos tolerances and makes the requisite safety findings based on aggregate exposure, including with respect to infants and children."

In an emailed statement, EPA told DTN it was reviewing its options. "EPA is reviewing the decision as it considers its options," the statement read. "As the agency pursues its mission to protect human health, including that of children, and the environment, EPA is committed to ensuring the safety of pesticides and other

chemicals. The agency is committed to helping support and protect farmworkers and their families while ensuring pesticides are used safely among the nation's agriculture. EPA will continue to use sound science in the decision-making process under the Federal Insecticide, Fungicide and Rodenticide Act."

Chlorpyrifos is an insecticide that targets biting and sucking pests, such as aphids. It is primarily used in soybeans, corn, wheat, cotton and orchard crops, although its use has fallen from 13 million pounds per year in the late 1990s, down to 5 million to 7 million pounds per year starting around 2010, according to the U.S. Geological Survey.

Corteva, the registrant and largest manufacturer of the insecticide, announced in February 2020 that it was discontinuing production of its branded chlorpyrifos product, Lorsban, citing the drop in demand.

This prompted an unusual situation, as EPA forged ahead with its registration review and interim registration decisions for chlorpyrifos in 2020, even as the chemical's registrant abandoned it. EPA's continued registration of chlorpyrifos would have kept generic chlorpyrifos products on the market, but this court ruling could change that -- if EPA opts to revoke the chemical's food tolerances.

Corteva told DTN in an emailed statement that the company is disappointed at that possibility, despite voluntarily discontinuing its chlorpyrifos production. "While Corteva Agriscience no longer produces chlorpyrifos, we are disappointed in this outcome, which threatens to effectively remove an important tool for farmers," the statement read. "The ruling disregards a robust database of more than 4,000 studies and reports that have examined the product in terms of health, safety and the environment."

Chlopyrifos has a long history of legal issues, starting with EPA fining its original registrant, Dow Chemical, nearly $1 million in 1995 for not disclosing reports of human health problems from the chemical's use during the previous decade.

The EPA reached an agreement with Dow to end all household uses of chlorpyrifos in 2000, but the legal challenges continued, especially after research showed a link between the pesticide's use and neurological problems in children, leading to the 2007 petition to ban it by environmental...

Judges rebuke EPA for evading ban on pesticide in food

Pamela King, E&E News

https://www.eenews.net/eenewspm/2021/04/29/stories/1063731367

A federal appeals court today said that EPA must ban foods containing a harmful insecticide — or show it can find some level of the chemical that is safe for children.

The ruling by the 9th U.S. Circuit Court of Appeals relates to chlorpyrifos, which has been linked to learning disabilities and development issues in children.

Environmental groups have been pressing EPA to prohibit foods containing the chemical since 2007, but the agency has not acted on the requests.

"EPA has spent more than a decade assembling a record of chlorpyrifos's ill effects and has repeatedly determined, based on that record, that it cannot conclude, to the statutorily required standard of reasonable certainty, that the present tolerances are causing no harm," wrote Senior Judge Jed Rakoff of the U.S. District Court for the Southern District of New York.

Rakoff, a Clinton appointee, sat on the 9th Circuit panel by designation.

"Yet," he continued, "rather than ban the pesticide or reduce the tolerances to levels that the EPA can find are reasonably certain to cause no harm, the EPA has sought to evade, through one delaying tactic after another, its plain statutory duties."

The Federal Food, Drug and Cosmetic Act prohibits any further delay, Rakoff wrote.

He gave EPA 60 days from the closure of the case to either issue an outright ban on chlorpyrifos in food or reset its "tolerance" for the insecticide, which describes the maximum amount of the chemical that can remain in food.

Judge Jacqueline Nguyen, an Obama appointee to the 9th Circuit, joined Rakoff in the court's majority opinion.

EPA won't be able to take the court's second recommended course of action, said Patti Goldman, Earthjustice managing attorney who represented the League of United Latin American Citizens and other challengers in the case.

"Given the nature of the decision and this administration's commitment to science and protecting the most vulnerable, it's time for EPA to act," she said.

EPA said it is reviewing the ruling.

"As the agency pursues its mission to protect human health, including that of children, and the environment, EPA is committed to ensuring the safety of pesticides and other chemicals," EPA spokesperson Ken Labbe said in an emailed statement. "The agency is committed to helping support and protect farmworkers and their families while ensuring pesticides are used safely among the nation's agriculture."

Chlorpyrifos is one chemical in a class of organophosphate pesticides, which were first developed as nerve gas by Nazis during World War II and which are now used to repel pests from strawberries, broccoli, corn and other crops.

Studies — including one by EPA itself — have shown that even low levels of chlorpyrifos exposure early in life can lead to lower IQ and other developmental issues.

'Vast overreach'
The 9th Circuit's ruling was not unanimous.

In his dissent, 9th Circuit Senior Judge Jay Bybee wrote that although he agreed with the majority that EPA "dithered far too long" on the matter, the court's ruling today "effectively decided the appropriate remedy."

"By ordering EPA either to revoke all tolerances or modify the tolerances with the requisite safety findings within 60 days, our order virtually guarantees the EPA will revoke chlorpyrifos tolerances," wrote Bybee, a George W. Bush appointee.

"This is a vast overreach, a clear abuse of our discretion," he continued.

Genetically modified mosquitoes have landed in the Keys. Here's what you need to know

Gwen Filosa, Miami Herald

https://www.miamiherald.com/news/local/community/florida-keys/article251031419.html

More than 20 million genetically modified mosquitoes are coming to the Florida Keys this year, in a landmark project by British biotech company Oxitec and Monroe County's Mosquito Control District.

This mosquito control method hasn't been used in the U.S. before. It's a pilot program and the first trial began over the past week.

The project is aimed at reducing the population of the invasive Aedes aegypti, which carries diseases like Zika. This is the first time in the country that the U.S. Environmental Protection Agency has issued the "experimental use permit" for this method.

Andrea Leal, the Florida Keys Mosquito Control District's executive director, said they're watching their "tool box" shrink due to the bugs' resistance to insecticides. The Keys had a dengue outbreak last year, the first since 2010. That's when Mosquito Control began working with Oxitec.

"Dengue was something we worried about in other areas," Leal said. "Once that came to our doorstep we've seen other diseases. Dengue for us last year and Zika in Miami-Dade. This is really why we're looking at these new tools for mosquito control."

Here are some questions and answers about the GMO mosquito project in the Keys:

WHAT ARE GMO MOSQUITOES?
Genetically modified mosquitoes, in this case the non-biting male Aedes aegypti species, are created in a lab by the British biotech company Oxitec. Once released, they are supposed to mate with naturally occurring females in the wild. A "self-limiting" gene prevents biting female offspring from surviving.

WHAT WILL THE MOSQUITOES DO?
The GMO male mosquitoes are supposed to reduce or control the population of the troublesome Aedes aegypti species, according to Oxitec and the Florida Keys Mosquito Control District.

They'll do this by mating. But their female offspring won't survive, Oxitec says.

A "death mechanism" designed into the mosquitoes is meant to ensure no viable female offspring will result from the mating, Oxitec says. The male offspring will pass on the "self-limiting gene" to half of their offspring. Female mosquitoes are the only ones that bite and feed off humans.

During the project's first trial, once the male and female eggs in the boxes hatch, the females will die.

"The males will survive," said Nathan Rose, Oxitec's head of regulatory affairs. "They carry the gene but it doesn't kill them. They can go pass on their genes. Only the female offspring will die."

The Aedes aegypti mosquito makes up 4% of the mosquito population in the Keys. But it is responsible for virtually all of disease-spreading, according to the Mosquito Control District.

This week, boxes of mosquito eggs, food and water started being placed in the Lower Keys as part of a pilot project by Oxitec and the Florida Keys Mosquito Control District. Genetically modified male mosquitoes will emerge in an effort to reduce the population of the disease-carrying Aedes aegypti mosquito. PROVIDED BY OXITEC

WHERE ARE THE MOSQUITOES BEING RELEASED?
So far, boxes with eggs, food and water have been placed in six locations — all private residences — in the Lower and Middle Keys. Two are on Cudjoe Key, one on Ramrod Key and three on Vaca Key.

Throughout those locations, about 12,000 mosquitoes will emerge each week for about 12 weeks, Oxitec says.

HAS THIS BEEN DONE BEFORE?
Not in the U.S. when it comes to mosquitoes.

This is the first time the U.S. Environmental Protection Agency has issued an "experimental use permit" for this particular method of mosquito control.

But the technology was done in São Paulo, Brazil, in 2019. Oxitec called it a success, reporting that in 13 weeks, the treatment suppressed up to 95 percent of Aedes aegypti.

However, those figures may have been inflated. Emails obtained by an activist group revealed that the majority...

EPA's 'time is up' on critical pesticide chlorpyrifos - 9th Circuit

Sebastien Malo, Reuters

https://www.reuters.com/article/usa-environment-chlorpyrifos-epa-idUSL1N2MN01S

A federal appeals court ordered the Environmental Protection Agency on Thursday to decide within 60 days to either set new safety levels for exposure to agricultural pesticide chlorpyrifos, or ban the substance altogether.

In a win for green groups and states who have been pushing the EPA for more than a decade to ban food uses of the widely used chemical through lawsuits and petitions making claims under the Federal Food, Drug and Cosmetic Act (FFDCA), a majority of a 9th U.S. Circuit Court of Appeals panel told the agency that it had waited too long to act on evidence chlorpyrifos is harmful and that its "time is now up."

To read the full story on Westlaw Today, click here: bit.ly/3nAwEZi

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12,000 Genetically Modified Mosquito Eggs Scattered in Florida as "Living Insecticides"

Mark Bustos, Science Times

https://www.sciencetimes.com/articles/30962/20210502/first-batch-genetically-modified-mosquitoes-arrive-florida.htm

The United States has received its first batch of genetically modified mosquitoes - testing whether the altered insects could prove efficient in controlling their numbers in the region.

As the culmination of a decades-long effort by local pest control authorities, the genetically modified mosquitoes have started in the Florida Keys - with 12,000 GMO eggs placed in strategic locations across Ramrod Key, Cudjoe Key, and Vaca Keys. At the start of its first phase, which is expected to run for 12 weeks, the eggs only need water to hatch and are expected to mature and integrate into the environment for the next week.

The genetically modified mosquitoes were developed by a US-owned, UK-based company named Oxitec. These genetic mutants are expected to serve as "living insecticide," controlling the population of mosquitoes without resorting to insecticides, which are known to have side effects.

No to Mutant Mosquitoes!
The technologically innovative solution, however, is not met with a unanimously warm reception. A small and vocal group of local residents have expressed disapproval of the so-called "mutant mosquitoes" ever since the project was announced. Now that the genetically modified mosquitoes are here, they are not pleased.

"Our opposition has been long and strong," said Barry Wray, executive director of the Florida Keys Environmental Coalition, in an article by CNN. "We live here, this our home, and they're forcing this down people's throats."

Mara Daly, a Key Largo resident who has been opposing this project for eight years now, said that the only thing they can do legally at this point is to "stand in your yard with an insect fogger.

The organization also has a Change.org petition that aims to "Tell the EPA [the US Environmental Protection Agency] NO Genetically Modified Mosquitoes," with close to 238,000 signatures out of its 300,000 targets. The petition argues that Oxitec aims to use the areas of Florida Keys and Texas as "testing grounds" for the "mutant bugs." Additionally, the petition outlines that more than 30 physicians have also requested more evaluations of releasing these mutant mosquitoes into the environment, particularly on the risks of the GMO insects in relation to developing antibiotic resistance.

Releasing the Living Insecticides in the US
The recent deployment of genetically modified mosquitoes has been approved by the EPA last May 2020, starting with the Florida Keys phase. This project has the approval to release up to 750 million of these living insecticides in 2021 up until 2022.

This project looks at a particular species of mosquito - Aedes aegypti - an invasive species known to transmit a variety of dangerous diseases such as dengue, yellow fever, and the Zika virus. The Zika virus, in particular, has prompted a globally-concerted effort as a public health emergency in 2016 after finding an alarming rate of babies born with microcephaly - a medical condition characterized by unusually small heads - from mothers infected with the virus in French Polynesia and in Brazil.

The mosquitoes carrying this virus were soon found in more than 30 territories, which included Texas and Florida in the US.

With the Oxitec mutant mosquitoes, female Aedes aegypti are targeted - since they are carriers of the disease to humans as they hunt for blood...

EPA Will Finalize Rule Imposing Toxics Release Inventory Reporting Requirements on Natural Gas Processing Facilities

Steven Barringer, National Law Review (Greenberg Traurig, LLP)

https://www.natlawreview.com/article/epa-will-finalize-rule-imposing-toxics-release-inventory-reporting-requirements

On April 29, 2021, Administrator Michael Regan announced that EPA plans to add Natural Gas Processing (NGP) facilities to the list of industries subject to Toxics Release Inventory (TRI) reporting requirements. TRI requires facilities to report releases of toxic chemicals if the facilities' manufacture, process, or other use of the chemicals exceed regulatory thresholds. TRI reports (Form Rs) must be filed annually on or before July 1 for the preceding calendar year. While the TRI program does not require facilities to acquire any new data, compliance requires a significant amount of analysis of existing facility records and data.

EPA first proposed the addition of NGP facilities on Jan. 6, 2017 (82 Fed. Reg. 1651), but the proposal languished during the Trump administration. The proposed rule describes NGPs as "stationary surface facilities that receive gas from a gathering system that supplies raw natural gas from many nearby wells." 82 Fed. Reg. at 1653. The facilities separate natural gas liquids from raw natural gas and fractionate them or send them off-site for further processing. EPA has identified 517 such facilities (in the lower 48 states), and estimates that over half of them would meet TRI reporting thresholds. The final rule likely will impose TRI reporting requirements on all facilities in North American Industry Classification System (NAICS) code 211112 – Natural Gas Liquid Extraction. Some of these facilities are already subject to TRI requirements if they "primarily engage in sulfur recovery from natural gas." 40 C.F.R. § 372.23(b).

If the rule is finalized in 2021, as expected, TRI requirements will begin to apply on Jan. 1, 2022 (Reporting Year 2022), and the first TRI reports will be due on July 1, 2023.

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